

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

The United States of America, The Republic
of China, The United Kingdom of Great Britain
and Northern Ireland, The Union of Soviet
Socialist Republics, The Commonwealth of
Australia, Canada, The Republic of France, The
Kingdom of the Netherlands, New Zealand, India,
and The Commonwealth of the Philippines,

- Against -

ARAKI, Sadao; DOHIHARA, Kenji; HASHIMOTO,
Kingoro; HATA, Shunroku; HIRANUMA, Kiichiro;
HIROTA, Koki; HOSHINO, Naoki; ITAGAKI,
Seishiro; KAYA, Okinori; KIDO, Koichi; KIMURA,
Heitaro; KOISO, Kuniaki; MATSUI, Iwane;
MATSUOKA, Yosuke; MINAMI, Jiro; MUTO, Akira;
NAGANO, Osami; OKA, Takasumi; OKAWA, Shumei;
OSHIMA, Hiroshi; SATO, Kenryo; SHIGEMITSU,
Mamoru; SHIMADA, Shigetaro; SHIRATORI, Toshio;
SUZUKI, Teiichi; TOGO, Shigenori; TOJO, Hideki;
UMEZU, Yoshijiro,

- Accused -

Court House of the Tribunal
War Ministry Building
Tokyo, Japan
Monday -- 3 June, 1946

T R I A L

Before:

HON. SIR WILLIAM F. WEBB, President
of the Tribunal and Member from
the Commonwealth of Australia;

HON. E. STUART MC DOUGALL, Justice,
Member from the Dominion of Canada;

HON. JU-AO MEI, Member from the
Republic of China;

HON. HENRI BERNARD, Member from the
Republic of France;

HON. BERNARD VICTOR A. ROLING,
Member from the Kingdom of the
Netherlands;

HON. ERIMA HARVEY NORTHCROFT, Justice,
Member from the Dominion of
New Zealand;

HON. I. M. ZARYANOV, Justice,
Member from the Union of Soviet
Socialist Republics;

HON. LORD PATRICK, Member from the
United Kingdom of Great Britain
and Northern Ireland;

HON. JOHN P. HIGGINS, Justice, Member
from the United States of America; and

HON. R. B. PAL, Justice, Member from the
Government of India.

A P P E A R A N C E S

For the International Prosecution Section:

MR. JOSEPH B. KEENAN, Chief of Counsel,
acting on behalf of the United States
of America;

HSIANG CHE-CHUN, Judge, Associate Counsel,
acting on behalf of the Republic of
China;

MR. A. S. COMYNS CARR, Associate Counsel,
acting on behalf of the United Kingdom
of Great Britain and Northern Ireland;

MR. S. A. GOLUNSKY, Associate Counsel,
acting on behalf of the Union of
Soviet Socialist Republics;

A. J. MANSFIELD, Justice, Associate Counsel,
acting on behalf of the Commonwealth of
Australia;

MR. H. G. NOLAN, Brigadier, Associate Counsel,
acting on behalf of Canada;

MR. ROBERT ONETO, Associate Counsel,
acting on behalf of the Republic of
France;

MR. W. G. F. BORGERHOFF MULDER, Justice,
Associate Counsel, acting on behalf of
the Kingdom of the Netherlands

R. H. QUILLIAM, Brigadier, Associate Counsel,
acting on behalf of New Zealand;

MR. PEDRO LOPEZ, Associate Counsel,
acting on behalf of the Commonwealth
of the Philippines; and

MR. G. MENON, Associate Counsel,
acting on behalf of India.

For the International Prosecution Section: (Continued):

LIEUTENANT COLONEL JOHN W.
BRABNER-SMITH, AUS

MAJOR JAMES H. BROCK, AUS

MR. HENRY CHIU

MR. JOHN DARSEY

MR. REGINALD S. DAVIES

MR. ROBERT M. DONIHI

CAPTAIN HARRYMAN DORSEY,

MR. JOSEPH F. ENGLISH

MR. JOHN W. FIEHELLY

MR. VALENTINE C. HAMMACK

MR. GROVER C. HARDIN

MR. HENRY A. HAUXHURST

MR. HUGH B. HELM

MR. CARLISLE W. HIGGINS

MR. SOLIS HORWITZ

MAJOR JOHN F. HUMMEL

MR. CHRISTMAS HUMPHREYS

MR. G. OSMOND HYDE

MR. ELTON M. HYDER, Jr.

MR. T. C. LIU

MRS. GRACE K. LLEWELLYN

MR. WILLIS E. MAHONEY

MR. WALTER I. MCKENZIE

For the International Prosecution Section: (Continued):

MR. WORTH E. McKINNEY

MR. K. KRISHNA MENON

MR. F. A. MIGNONE

MR. ROY MORGAN

LIEUTENANT COLONEL T. MORMANE

COLONEL THOMAS H. MORROW

MR. KENNETH N. PARKINSON

MR. GUIDO PIGNATELLI

CAPTAIN JAMES J. ROBINSON, USNR

MR. HENRY R. SACKETT

CAPTAIN ARTHUR A. SANDUSKY

COMMANDER JOHN D. SHEA, USNR

MR. C. R. STROOKER

MR. DAVID N. SUTTON

MR. FRANK S. TAVENNER, Jr.

MR. ALBERT WILLIAMS

MR. EUGENE D. WILLIAMS

MR. GILBERT S. WOOLWORTH

For the Defense Section:

CAPTAIN BEVERLY M. COLEMAN, USNR,
Chief of Counsel;

SUGAWARA, Yutaka, Counsel for Accused ARAKI,
Sadao;

TSUKAZAKI, Naoyoshi, Counsel for Accused
DOHIHARA, Kenji;

HAYASHI, Itsuro, Counsel for Accused
HASHIMOTO, Kingoro;

LIEUTENANT ARISTILES G. LAZARUS, USMCR, and
KANZAKI, Masayoshi, Counsel for Accused
HATA, Shunroku;

CAPTAIN SAMUEL J. KLEIMAN, AC, and
USAMI, Rukuro, Counsel for Accused
HIRANUMA, Kiichiro;

HANAI, Tada'shi, Counsel for Accused
HIROTA, Koki;

FUJII, Goichiro, Counsel for Accused
HOSHINO, Naoki;

YAMADA, Hanzo, Counsel for Accused
ITAGAKI, Seishiro;

TAKANO, Tsuruo, Counsel for Accused
KAYA, Okinori;

HOZUMI, Shigetaka, Counsel for Accused
KIDO, Koichi;

SHIOHARA, Toksaburo, Counsel for Accused
KIMURA, Heitaro;

SAMMONJI, Shohei, Counsel for Accused
KOISO, Kuniaki;

ITO, Kiyoshi, Counsel for Accused
MATSUI, Iwane;

MR. FRANKLIN E. N. WARREN and
KOBAYASHI, Shunzo, Counsel for Accused
MATSUOKA, Yosuke;

For the Defense Section (continued):

TAKEUCHI, Kintaro, Counsel for Accused
MINAMI, Jiro;

OKAMOTO, Shoichi, Counsel for Accused
MUTO, Akira;

OKUYAMA, Hachiro, Counsel for Accused
NAGANO, Osami;

SOMIYA, Shinji, Counsel for Accused
OKA, Takasumi;

CAPTAIN A. W. BROOKS, AUS, and
OHARA, Shinichi, Counsel for Accused
OKAWA, Shumei;

TSUKAZAKI, Naoyoshi, Counsel for Accused
OSHIMA, Hiroshi;

KIYOSE, Ichiro, Counsel for Accused
SATO, Kenryo;

MR. GEORGE A. FURNESS and
TAKAYANAGI, Kenzo, Counsel for Accused
SHIGEMITSU, Mamoru;

TAKAHASHI, Yoshitsugu, Counsel for
Accused SHIMADA, Shigetaro;

DR. UZAWA, Somei, Counsel for Accused
SHIRATORI, Toshio;

HASEGAWA, Motokichi, Counsel for Accused
SUZUKI, Teiichi;

MR. GEORGE YAMAOKA and
HOZUMI, Shigetake, Counsel for Accused
TOGO, Shigenori;

KIYOSE, Ichiro, Counsel for Accused
TOJO, Hideki; and

MAJOR BEN BRUCE BLAKENEY, AC, and
MIYAKE, Shotaro, Counsel for Accused
ULEZU, Yoshijiro.

Monday, 3 June, 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

(English to Japanese interpretation was made
by SHIMANOUCHI, Toshiro, of statements from the floor,
and by MORI, Tomio, of the President's statements,
Hidekazu Hayashi acting as Monitor.)

MARSHAL OF THE COURT: The International Military
Tribunal for the Far East is in session and is ready to hear
any matter brought before it.

THE PRESIDENT: All the accused are present
except OKAWA and MATSUOKA. Are there any further appear-
ances of counsel?

CAPTAIN COLEMAN: If the Tribunal please, the
defense would like to introduce the following American
counsel:

Mr. Lawrence McManus, on behalf of the defendant
ARAKI;

Mr. Franklin E. N. Warren, on behalf of the
defendant DOHIHARA;

1 Mr. David F. Smith, on behalf of the defend-
2 ant HIROTA;

3 Mr. George C. Williams, on behalf of the
4 defendant HOSHINO;

5 Mr. James N. Freeman, on behalf of the defend-
6 ant SATO;

7 Mr. William Logan, on behalf of the defendant
8 KIDO;

9 Captain Alfred Brooks, on behalf of the defend-
10 ant KOISO;

11 Mr. Joseph C. Howard, on behalf of the defend-
12 ant KIMURA;

13 Mr. Owen Cunningham, on behalf of the defend-
14 ant OSHIMA;

15 Mr. Edward P. McDermott, on behalf of the
16 defendant SHIMADA;

17 Mr. Charles B. Caudle, on behalf of the defend-
18 ant SHIRATORI; and

19 Mr. Floyd J. Mattice, on behalf of the defend-
20 ant MATSUI.

21 THE PRESIDENT: I had proposed to ask for
22 correction of the transcript of the previous proceedings
23 so far as corrections appear to be necessary; but, with
24 the concurrence of my colleagues, I propose to place that
25 matter at the end of the list.

1 The next matter is the request of the accused
2 MATSUOKA for confinement in a private sanatorium and that
3 his name be stricken from the Indictment.

4 MR. WARREN: If the Tribunal please, the Court
5 has heretofore ordered a medical examination to be made
6 of the accused MATSUOKA. That examination has been
7 made, and the reports of physicians are before the
8 Tribunal. I have not had an opportunity to personally
9 confer with Mr. Keenan, but I understand there will
10 be no contest as to the facts with reference to Mr.
11 MATSUOKA'S illness.

12 We have asked that he be confined in a private
13 sanatorium and that the proceedings either be stayed
14 at this time or his name stricken from the Indictment.

15 The request that he be removed from the
16 American hospital to a private sanatorium has been
17 made at the request of the hospital authorities who
18 feel that he should be moved. They have made that
19 request to me personally and they have not filed any
20 formal matter before the Court; but, if the Tribunal
21 desires that, it can be obtained.

22 It is our further understanding that the
23 prosecution would object to striking Mr. MATSUOKA'S
24 name from the Indictment because of reasons best known
25 to themselves. The defense would not insist that his

1 name be stricken from the Indictment, but we do respectfully
2 request the Tribunal to stay the proceedings, or continue
3 the case against him, until further order of the Tribunal.
4 It is a matter that we don't believe needs further
5 argument or presentation to the Court, and so, we will
6 for the defense at least, submit it to the Court without
7 further comment.

8 I thank you.

9 THE PRESIDENT: Mr. Chief Prosecutor.

10 MR. KEENAN: Mr. President, Section IV, Article
11 12, paragraph d of the Charter, General Order No. 20,
12 gives this Tribunal the responsibility of determining
13 "the mental and physical capacity of any accused to pro-
14 ceed to trial." We have no argument to make upon the
15 physical condition of the accused MATSUOKA. The reports
16 of physicians have been made and, I understand, have been
17 transmitted to the Court.

18 I do not believe that this Tribunal has the
19 authority to determine the ultimate custody of accused
20 MATSUOKA or to do anything further than to determine
21 whether the proceedings at this time, for reasons set
22 forth in the medical report, should be stayed against
23 him. The prosecution has no interest where accused
24 MATSUOKA remains if he is not in this courtroom.

25 THE PRESIDENT: The Court will consider the

1 matter. Their decision will be given later.

2 A similar request on behalf of the accused
3 Shumei OKAWA.

4 CAPTAIN BROOKS: If the Tribunal please, in
5 this case -- it is similar -- a request was made that
6 the name of OKAWA be struck from the Indictment after
7 his examination by the medical authorities, on behalf
8 of the prosecution and defense, was given to the Court.

9 On the 30th of May the Station Hospital where
10 OKAWA was confined directed a letter to the Tribunal --
11 which, I believe, is before it this morning -- stating
12 that adequate treatment for this patient cannot be
13 rendered at this hospital; and they have recommended
14 a transfer of the patient to a Japanese hospital.

15 There is this difference in this case:
16 that in asking for OKAWA'S name to be struck from the
17 Indictment, he has not pleaded in the case. A plea
18 has not been entered and we believe that his name
19 should be struck from the Indictment and all further
20 proceedings stayed until such time as treatment may
21 show that he has recovered sufficiently as to be able
22 to distinguish right from wrong and be responsible for
23 his actions and for assisting counsel in preparing his
24 defense.

25 It is requested that the Tribunal authorize

1 and direct the transfer of OKAWA, who has been determined
2 to be of unsound mind, to the Psychiatric Ward of the
3 Tokyo Imperial Hospital for proper care and treatment
4 under the direction of Dr. UCHIMURA who agrees to be
5 responsible for the custody, control and treatment
6 of such patient subject to such further order of this
7 Tribunal.

8 If the Court will direct, as requested in
9 these petitions or requests subject to such approval
10 as may be necessary from the Supreme Commander and
11 prison authorities, such transfer can be made.

12 THE PRESIDENT: The Chief Prosecutor.

13 MR. KEENAN: Of course, the Prosecution urges
14 that there is no warrant whatsoever for dismissing either
15 of these defendants from the Indictment. There has been
16 no showing made that they are not guilty of the offenses
17 charged. The fact that either of the accused is unable
18 to proceed to trial due to either physical disability or
19 mental disability constitutes no ground for dismissal
20 of a charge made against them.

21 In the case of OKAWA, the Prosecution is
22 interested only in his being confined in a place of
23 safety to the community at large.

24 CAPTAIN BROOKS: If the Tribunal please, this
25 is a common trial. Therefore, this man, OKAWA, is

1 entitled to a just and fair trial. We have asked that his
2 name be struck from the Indictment, or the proceedings
3 stayed in his case, because we feel that the Court wants
4 to proceed and to expedite matters.

5 Since this man is not mentally capable of
6 pleading and is not in a condition to advise with counsel
7 in the preparation of his defense as to procurement of
8 evidence and witnesses in his behalf so he may be present
9 to aid in cross-examination of witnesses who may appear
10 against him and be given an opportunity to testify and
11 present a proper defense in a just and fair trial, this
12 request has been made.

13 MR. KEENAN: May I be permitted to voice an
14 objection?

15 Mr. President, the Prosecution objects to any
16 further argument on the grounds that there has been no
17 new matter raised in the answer, no call for any reply;
18 and, it is suggested that, if this type of proceeding
19 continues, this case will continue for an interminable
20 period of time.

21 CAPTAIN BROOKS: If the Tribunal please,
22 the matter was raised by the Chief Prosecutor as to
23 no basis being made for striking this man from the
24 Indictment. I say there is a basis, that he can be
25 indicted at a later period and be tried separately

1 at a later time if he does recover sufficiently to have
2 mental capacity for a fair trial.

3 THE PRESIDENT: The Tribunal will consider
4 the matter and give its decision later.

5 The next business is a motion by the Pros-
6 ecution for certain orders. I may say my colleagues
7 have not been supplied with copies of this motion and,
8 of course, cannot be expected to deal with it without
9 the papers.

10 MR. JUSTICE MANSFIELD: If the Tribunal
11 please, the motion was filed during last week with the
12 Clerk of the Court in accordance with the rules of Court
13 as they were at that time. The Prosecution regrets that
14 there is not a copy of the motion for each of the Members
15 of the Tribunal.

16 Does the Tribunal intend to hear any of the
17 motions contained in the paper or to adjourn?

18 THE PRESIDENT: The motion will be placed
19 at the bottom of the list pending the supply of a copy
20 of the motion to each of the Members of the Tribunal

21 The next motion is by the defendants for a
22 continuance.

23 MR. MATTICE: May it please the Tribunal,
24 as a matter of convenience, speaking for all American
25 counsel who have recently arrived upon the motion for

1 a continuance, we are not even signers on the motion.
2 Our appearances came in this morning. Our arrival
3 was two weeks ago. We came, of course, on short notice.
4 We could not arrive until the War Department transported
5 us to this point. We find ourselves not only in a
6 strange land but dealing with a strange and new
7 practice to us. We ask only a reasonable time within
8 which to acquaint ourselves.

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1 While we have been here two weeks, the time within
2 which we could devote ourselves to the task has been only
3 a few days. Without going into detail concerning that, I
4 may say simply that it has been due to the fact that time
5 was required for billeting, processing, taking of vaccina-
6 tions, and recovery from those vaccinations -- as to some
7 of us at least. Quarters, in the way of offices in this
8 building assigned to us, were not ready for us -- that is,
9 with respect to many of us. Secretaries and stenographers
10 arrived the latter part of the week and were first seen
11 by most of us this morning. We think it is obvious that
12 if, as in our country, we are, in addition to being
13 counsel for the defense, officers of this Tribunal, that if
14 we are to be of assistance, if we are to be of any assist-
15 ance to the defendants whom we are to represent or to
16 Japanese counsel representing those defendants, we should
17 have a reasonable time in which to acquaint ourself and
18 prepare. We are not asking for any particular time. I
19 think I voice the feeling of our group when I say that, if
20 we had any time, it would be of great assistance to us.

21 THE PRESIDENT: Mr. Chief Prosecutor.

22 MR. KEENAN: The prosecution is ready to proceed
23 today in accordance with the Court's direction. With the
24 full compliance with all requirements of the Charter, each
25 of the accused has long had counsel of his own choice and

1 has had for many weeks, and perhaps months, the services
2 of American counsel for the purpose of advice and consul-
3 tation; and the prosecution respectfully urges upon this
4 Court that these proceedings advance in their proper order
5 as designated. We are ready to proceed.

6 THE PRESIDENT: The applicants have not given
7 us any assistance in not being able to tell us just what
8 time they would like to have.

9 MR. MATTICE: If the Tribunal please, I in-
10 dicated that any reasonable time would be sufficient. We
11 have not consulted -- or at least we have not agreed upon
12 a period of time. I shall have to guess for my associates;
13 and, in doing so, I should say that if we had two weeks
14 we might accomplish something. I say that seriously because
15 we have learned in the short time we have been here that
16 everything we do is a time consuming matter. We find that
17 when we talk to Japanese counsel, or through an interpreter
18 to defendants, that far more than the usual time is re-
19 quired. We find that when we go to the various offices to
20 be, what it seems to be known in military circles as
21 "processed;" it takes about four times as much time as it
22 takes back in our country to do a similar thing.

23 One thing more, if the Tribunal please: as to
24 what assistance and representation to these
25 defendants has been afforded by other American counsel, we

1 are not advised; we are not familiar with that; we simply
2 do not know. I can only repeat what I said in the be-
3 ginning: if we are to be of any real assistance to this
4 Tribunal, to the defendants, to Japanese counsel, we
5 reasonably should have some time. We have not had it. I
6 wonder why we are here.

7 MR. KEENAN: Might I be permitted, Mr. Presi-
8 dent, to refer to Section III of the Charter, Article 9,
9 paragraph c, and respectfully suggest that the provisions
10 therein contained provide for a fair trial for the accused
11 in manners seldom approached in any nation represented in
12 this prosecution or in any other part of these proceedings.

13 This section provides: "Each accused shall
14 have the right to be represented by counsel of his own
15 selection, subject to the disapproval of such counsel at
16 any time by the Tribunal." This right, provided in this
17 section of the Charter, has been freely exercised by each
18 of the accused, and no such counsel has been disqualified
19 by this Court.

20 The section continues: "The accused shall file
21 with the General Secretary of the Tribunal the name of his
22 counsel. If an accused is not represented by counsel and
23 in open court requests the appointment of counsel, the
24 Tribunal shall designate counsel for him." Not a single
25 one of the accused has requested the appointment of any

1 other counsel other than that of his own selection.

2 The section provides: "In the absence of such
3 request the Tribunal may appoint counsel for an accused if
4 in its judgment such appointment is necessary to provide
5 for a fair trial." The Charter has been translated into the
6 Japanese language and furnished long ago to each of the
7 accused. The Indictment has been read in open court and
8 has been served beforehand in the Japanese language upon
9 each accused. Every proceeding that has taken place or may
10 take place from the beginning to the end of this trial must
11 be translated into the Japanese language as the proceedings
12 take place.

13 Mr. President, under such circumstances, the
14 prosecution with great earnestness requests the Tribunal
15 to permit it to present the evidence against these accused,
16 to state the reasons for this prosecution, at the same time
17 with great respect reminding all counsel that there are
18 natural difficulties encountered in a far off land of which
19 none of us are natives.

20 CAPTAIN COLEMAN: If the Tribunal please, all
21 of the accused, through their individual Japanese counsel,
22 have requested an opportunity to select American counsel.
23 Only a part of the accused have completed their selections
24 of their individual associate American counsel. After the
25 limited time available to the newly arrived American counsel

1 to acquaint themselves with the several cases, their
2 estimates of the time necessary adequately to prepare for
3 trial runs from two weeks to three months.

4 THE PRESIDENT: The Tribunal will consider
5 the matter and give its decision later.

6 The next business on the sheet is a motion by
7 the defendants for an order concerning the time of making
8 the opening statement.

9 MAJOR BLAKENEY: May it please the Tribunal,
10 I present this motion, together with certain other motions,
11 on behalf of all or most of American counsel. So far as
12 concerns the present motion, I speak for all American
13 counsel.

14 Our motion for an order concerning the time for
15 making opening statements might perhaps appropriately
16 have been considered in connection with the analogous
17 request of the prosecution. As we have no objection to
18 the prosecution's request, so we are advised that they have
19 no objection to ours, and I believe the Tribunal will
20 readily apprehend that the orderly despatch of business,
21 the conservation of time and energy, and the avoidance of
22 duplication of argument may best be attained in the manner
23 herein suggested. We therefore have no desire to do more
24 than present this manner of proceeding to the Tribunal.

25 MR. JUSTICE MANSFIELD: If the Tribunal please,

1 the application made on behalf of the defense is, in fact,
2 unnecessary because it is already provided by the Charter,
3 Article 15, c, which says that "The prosecution and each
4 accused (by counsel only, if represented) may make a
5 concise opening statement." So that the application by
6 the accused to make an opening statement before each
7 accused gives evidence is already provided for in the
8 Charter. The prosecution, however, has no objection to
9 the order.

10 MAJOR BLAKENEY: I merely wish to point out
11 to the Tribunal that the significant part of our motion
12 is the time at which the opening statement will be made.
13 That, I think, perhaps was not apprehended by Mr. Justice
14 Mansfield as being the meat of this motion.

15 THE PRESIDENT: The Tribunal will consider
16 the matter and give its decision later.

17 The next business on the sheet is a motion
18 by the defendants for specific findings of fact.

19 MAJOR BLAKENEY: Insofar as concerns this
20 motion, also, I speak for all defendants.

21 While it is true that the Charter and rules of
22 the Tribunal provide that at the termination of the case
23 the Court shall give its reasons, we request by this
24 motion that the Court do something much more specific,
25 much less vague than giving reasons. It is the suggestion

1 of the defense by this motion that the Tribunal do what
2 I feel sure it will, in any event, not only feel compelled
3 but be most willing to do, which is to say, to give not
4 only its reasons for its judgment in the sense that the
5 Tribunal might say, "Defendant "A" is found guilty because
6 he committed murder," but to go much beyond that and to
7 make specific for the record, for us, and for posterity,
8 the exact matters of fact which have led the Court to its
9 conclusions in the case of the individual defendants.

10 This is a form of procedure which is, I assume,
11 familiar enough to all of us in certain types of cases.
12 The only novelty in this request inheres in the fact that
13 this is a criminal proceeding. Hence, I think it may be
14 of interest to this Tribunal to know what has been ordered
15 by rule of another distinguished tribunal, the Supreme
16 Court of the United States, in connection with the specific
17 finding of fact in criminal cases tried by the court in
18 the absence of a jury. I do not --

19 THE PRESIDENT: That is for the purpose of
20 appeal only. There is no appeal from this Court, if I
21 understand the position rightly.

22 MAJOR BLAKENEY: I think, Mr. President, that
23 we shall have to define the term "appeal," for quite
24 clearly the instruments establishing this Tribunal con-
25 template that there shall be, after judgment and sentence,

1 a review, to use the military terminology, which I think
2 we can treat as an appeal.

3 THE PRESIDENT: The review is on sentence only.

4 MAJOR BLAKENEY: But the reviewing authority
5 can, no more than an appellate court, go about its work
6 intelligently in the absence of a statement of the con-
7 siderations moving the Court to the pronouncement of the
8 sentence which is to be reviewed.

9 In any event, we wish to submit to the Tribunal
10 that the consciousness which hangs over this courtroom of
11 a trial at the bar of history, demands that this procedure
12 be adopted for the protection and for the edification of
13 all who shall be concerned in future times with the
14 proceedings here.

15 THE PRESIDENT: We do not wish to hear you,
16 Mr. Chief Prosecutor. This Tribunal must be trusted to
17 deal with the law and the facts as they should be dealt
18 with. The Charter is clear on the question of the reasons
19 we must give them. That would involve reviewing the facts.
20 How fully we review the facts will be a matter for our
21 discretion. We must be trusted to do the right thing.
22 This motion is almost contemptuous. We are all agreed
23 that it should be dismissed instanter, and it is dismissed.

24 The next business on the sheet is a motion by
25 the defendants for an order to be made parties to a certain

1 decision already made.

2 MAJOR BLAKENEY: In the absence of the official
3 transcript of the proceedings of the last hearing in
4 chambers, defense counsel are of the opinion that the
5 President ordered this motion sustained. May I have the
6 President's ruling?

7 THE PRESIDENT: The matter has been completed
8 as regards those defendants who are parties. The order
9 was taken out. I know of no jurisdiction of this Court
10 to reopen this matter in order to make new parties. You
11 can make the first motion, if you wish, in the same terms,
12 and the Court will know what order to make.

13 MAJOR BLAKENEY: Very well, sir.

14 THE PRESIDENT: The next business is a motion
15 of all defendants to dismiss the Indictment.

16 MR. WARREN: If the Tribunal please, there has
17 heretofore been argued before the Tribunal a motion which
18 went to the substance of the Indictment. This one merely
19 goes to the form. We know that the other motion was
20 argued before the Tribunal at great length. We feel that
21 the matter which could be raised at this time has been
22 called to the attention of the Tribunal and that the
23 Tribunal is fully informed in the premises. We desire to
24 present no further argument on this motion, but to submit
25 it to the Court as covering a phase which we had not previ-
ously covered. I thank you.

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1 THE PRESIDENT: We do not wish to hear you,
2 Mr. Chief Prosecutor. This matter or a similar matter
3 was dealt with by me with the concurrence of all my
4 colleagues and concurrence of all counsel for all the
5 accused.

6 I dismiss the application on this occasion
7 for further and better particulars. This application
8 is dismissed.

9 The next business is the motion on the part of
10 defendants for additional time within which to file
11 motions or other pleadings.

12 MR. FURNESS: If the Tribunal please, I
13 speak on this motion for all counsel for all defendants.
14 The argument should perhaps be better made by one of
15 the counsel who arrived within the past ten days or two
16 weeks. However, at the time that the motion was prepared,
17 they had no standing before the Court because they
18 represented no particular defendant. I signed the motion
19 and was assigned this morning to argue it.

20 The motion is that we be allowed -- that the
21 order entered on the 15th day of May, 1946, requiring that
22 any preliminary motions be filed by the 25th day of May,
23 1946 --- to further move the Tribunal to extend the time
24 within which such motions and pleadings may be filed
25 by the defendants, or any of them, by granting at least

1 one week beyond the time heretofore set.

2 Obviously, the time has expired, and we there-
3 fore wish to amend this motion to extend the time to one
4 week from the decision on the motion by the Tribunal.
5 The order setting the time, the 25th, was made in
6 Chambers on the 15th, and I refer to that record. The
7 grounds for the motion are largely stated in the second
8 paragraph, to which I also make reference.

9 These motions which I have in mind, which
10 counsel have in mind, could not be prepared until the
11 Court had ruled on some of the motions then under
12 consideration by it and which are now under consideration
13 as a result of the postponed decisions made this morning.
14 They may also depend on the reasons for decisions already
15 made by the Court, which reasons have not been stated,
16 but which we understand will be stated at a later date.
17 These motions could not be prepared without consultation
18 by individual accused. Mr. Mattice has argued those
19 points, and I will not argue them again for the Court
20 because they already have them under consideration.

21 It is the understanding of all counsel for
22 all accused that they may always question the fundamental
23 jurisdiction of this Court. Our motion is therefore
24 confined to motions the consideration of which would be
25 foreclosed by pleas at arraignment or by the commencement

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1 of the taking of evidence at commencement of the trial.

2 We ask, therefore, for an extension of one
3 week in which to file such motions from the date of the
4 decision by this Tribunal.

5 MR. KEENAN: Mr. President, I should like to
6 respectfully suggest that the Secretariat read out in
7 Court at this time the list of American counsel, and
8 when they became counsel, as a matter of record in this
9 courtroom so that we do not have batches and relays of
10 lawyers coming either in or out, because it may be re-
11 spectfully noted that these Japanese accused thus far
12 have only gotten around to seeking counsel from the
13 United States of America. There are other nations
14 upon this Court, and it will become necessary at some
15 time to determine within the range of what part of the
16 world these accused wish to have additional counsel
17 brought.

18 Therefore, I believe, in the interests of
19 fairness, so it may be understood by all present, we
20 ought to have that information made public so that
21 we will determine whether or not these accused have
22 thus far been provided with the method of obtaining
23 justice before this Tribunal.

24 I note that because the very motion that
25 now is being urged upon this Court touches the same

1 subject, and I assume, like Banquo's ghost, it will
2 never leave us until it is settled sometime. Already,
3 this Court has permitted a reasonable period of time
4 within which to file motions; already there is ample
5 evidence, with great respect, of, I will not say dilatory,
6 but at least not exceedingly expeditious methods of
7 proceeding in this trial. And with great respect, we
8 ask this Court to abide by its ruling of the reasonable
9 time that was given to counsel present and not keep
10 it open for a period of time in the future because,
11 if a further time is permitted now, when that date
12 arrives, then other counsel, perhaps from other nations
13 or peoples, will come in and ask for further extension.

14 MR. FURNESS: If the Tribunal wishes the Clerk
15 to read the list of counsel, it will seem to me only to
16 delay the consideration of this motion. Also, it seems
17 to me it will have nothing to do with whether it should
18 be granted or not. As far as I know, there is nothing
19 pending relating to requests for counsel from other
20 countries other than the United States. We feel our
21 request is entirely reasonable, and we request that
22 it be granted.

23 THE PRESIDENT: There are two answers: One to
24 the learned Chief Prosecutor, and one to the counsel
25 for the accused who has just spoken.

1 In the first place, all appearances for the
2 accused have already been announced in this courtroom,
3 and that, of course, is recorded. In the second place,
4 when I fixed the 25th of May, 1946 as the limit of time
5 for motions, every one of the accused was represented
6 by counsel and by counsel before me. The Court will
7 consider the matter and give its decision later.

8 The only remaining matters are those that have
9 been placed at the bottom of the list.

10 May I inquire whether the Chief Prosecutor
11 proposes to deliver his opening statement today?

12 MR. KEENAN: The statement is somewhat extensive,
13 necessarily, and I had assumed that we would be permitted
14 to give the same at the beginning of the session, and I
15 would prefer to do so. However, it is prepared; it is
16 filed with the Court; it is translated into the Japanese
17 language; and I am entirely obedient to the Court's
18 desires. But I would prefer that it be handled the first
19 thing in the morning.

20 THE PRESIDENT: I now invite corrections to
21 the transcript.

22 (No response.)

23 MR. KEENAN: Might I address the Court at this
24 time briefly?

25 I would assume, of course, that after the

1 opening statement begins we will forthwith put on our
2 testimony that we are prepared to proceed with.

3 THE PRESIDENT: Well, if there are no corrections
4 to the record, other than such as I may suggest later,
5 apparently the record stands.

6 I understand my colleagues are being supplied
7 with copies of the motion which Mr. Justice Mansfield
8 is to move.

9 We will recess now until eleven o'clock.

10 (Whereupon, at 1050, a recess was taken
11 until 1100, after which the proceedings were re-
12 sumed as follows: English to Japanese interpretation
13 being made by MOTONO, Seiichi of statements from
14 the floor and by IWAMOTO, Masahito of the President's
15 statements, Akira Itami acting as Monitor.)
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1 THE PRESIDENT: The defendants' motion for a
2 continuance is granted to this extent: That we fix the
3 third day of next week as the date for the opening state-
4 ment for the prosecution by the learned Chief Prosecutor,
5 which will be followed by evidence on the part of the
6 prosecution.

7 MR. KEENAN: Might I ask the President if it
8 would be agreeable to the Court, since the continuance
9 is a short one, that the opening statement be made to-
10 morrow morning?

11 THE PRESIDENT: Well, I can see no reason why
12 it should not be made.

13 MR. KEENAN: There will be an interval between
14 that and the presentation of the evidence. But, for the
15 purpose of saving at least one day, the prosecution would
16 waive any consequences of such delay, and we would much
17 prefer to go ahead and proceed tomorrow morning, if that
18 is compatible with the views of the Tribunal.

19 THE PRESIDENT: I should like to know the
20 attitude of counsel for the accused. I can see no dis-
21 advantage to them in the opening statement being made
22 tomorrow or Wednesday and to be followed by an adjourn-
23 ment for ten days.

24 THE MONITOR: Will the court reporter please
25 read back the last statement?

1 (Whereupon, the court reporter read the
2 last statement as requested.)

3 MR. KEENAN: I am informed by the counsel for
4 the accused that they have no objection to the opening
5 statement being made on Wednesday. I cannot, for the
6 life of me, understand how any rights of theirs would
7 in any way be affected by when this opening statement
8 is made. They have already been served with a copy
9 forty-eight hours ago; they have had it in their hands,
10 which is quite unusual; and, I think, if they have had
11 that time and another day to file any objections they
12 have to it, it is sufficient.

13 I have no other point to make other than a
14 keen desire to avert delay in these proceedings. The
15 proceedings were set for the 3rd of June; the prosecu-
16 tion is ready. It has witnesses here in Tokyo and docu-
17 ments translated, prepared and ready for presentation;
18 and, if we can save one day, Mr. President, it means
19 a great deal to the prosecution.

20 MR. WARREN: If the Tribunal please, the con-
21 sensus taken on the floor here seems to be our sugges-
22 tion of Wednesday, and would lose no time, and would
23 mean, simply, in order that we may take the one copy or
24 additional copies of his opening statement -- that is,
25 which Mr. Keenan has and to consolidate our objections

1 to save the time of the Tribunal. It was offered as a
2 courtesy to Mr. Keenan to keep any possible objection
3 being made while he was making his opening statement.
4 And, if he wants to hear it tomorrow, the defense has
5 no objection.

6 MR. KEENAN: I want to hear it tomorrow.

7 THE PRESIDENT: The Court desires you to open
8 tomorrow, Mr. Keenan. And, after your opening is com-
9 pleted, we will adjourn until the 13th of June -- the 13th
10 of June, ten days from today.

11 As to the motion to extend the time for pre-
12 liminary application, it has been decided that, with the
13 special leave of the President, any motion may be made
14 without any regard to any limitation of any kind.

15 The next matter is the motion of the prosecu-
16 tion for an order authorizing separate opening state-
17 ments and other matters.

18 MR. JUSTICE MANSFIELD: If the Tribunal please,
19 with regard to the decision that motions may be filed
20 with the special leave of the President, the prosecution
21 respectfully asks that it be notified when any applica-
22 tion for special leave is being made so that it may
23 appear and be heard on such application.

24 THE PRESIDENT: The position is covered by
25 general directions already given by me.

1 MONITOR: Will the court reporter read back the
2 last statement of the President?

3 (Whereupon, the court reporter read
4 the last statement, as requested.)

5 MR. JUSTICE MANSFIELD: With respect to the
6 motion before the Tribunal -- I refer to the first motion
7 before the Tribunal -- for an order that counsel present-
8 ing separate phases of the case be at liberty to make an
9 opening statement at the commencement of each of the
10 said phases, which is introducing and summarizing the
11 evidence to be adduced by the prosecution in relation
12 to such phase.

13 Article 15c of the Charter states: "The prose-
14 cution and each accused (by counsel only, if represented)
15 may make a concise opening statement."

16 In the presentation of the case for the prose-
17 cution, it has been found advisable by the prosecution
18 to break the period and the case down into a number of
19 phases corresponding roughly to the matters set out in
20 the Appendices A, D, and E of the Indictment. If a de-
21 tailed offering of the facts covering the whole of the case
22 is made at the commencement of the case, the value of
23 the opening will be lost when evidence is adduced at
24 some considerable period after the opening. And it is
25 submitted, respectfully, that the granting of the

1 application will attain the objectives which are en-
2 visaged in Article 12, subsections a and b of the Charter,
3 namely, to "Confine the trial strictly to an expeditious
4 hearing of the issues raised by the charges," and "b.,
5 Take strict measures to prevent any action which would
6 cause any unreasonable delay and rule out irrelevant
7 issues and statements of any kind whatsoever."

8 And it is further submitted to the Court that
9 the defense could not in anywise be prejudiced by the
10 granting of the application. It would only be of
11 assistance to the defense and, it is submitted, of
12 assistance to the Tribunal. And the prosecution under-
13 stands that no objections to the granting of the applica-
14 tion will be raised by the defense.

15 With regard to motion number two -- namely,
16 that the prosecution be at liberty to produce in court
17 documents, obtained from Japanese Government offices, pur-
18 porting to be records and files of such offices, without
19 further authentication -- reference is made to Article
20 13d of the Charter with regard to judicial matters.
21 "The Tribunal shall neither require proof of facts of
22 common knowledge, nor of the authenticity of official
23 government documents and reports of any nation, nor of
24 the proceedings, records, and findings of military or
25 other agencies of any of the United Nations."

1 All that the prosecution is seeking by this
2 motion is to place official Japanese Government records
3 in the same position as government records of the United
4 Nations and to obviate the necessity of obtaining what
5 may run into hundreds of certificates of authenticity
6 to annex to official government records -- Japanese
7 Government records -- which, in fact, on their face
8 purport to come from those particular sources. This
9 will not prejudice the right of any accused to object
10 to the admission of the document on the ground that it
11 is immaterial or irrelevant, or on any other substantial
12 ground.

13 I refer finally to Article 13c(1), which
14 deals with specific evidence which is admissible: "A
15 document, regardless of its security classification and
16 without proof of its issuance or signature, which appears
17 to the Tribunal to have been signed or issued by any
18 officer, department, agency or member of the armed
19 forces of any government." It may possibly be ad-
20 missible under that section. But, in order to erase
21 any doubt, at the commencement of the proceedings, this
22 application has been made.

23 Reference is also made to Article 13a, with
24 respect to motion number three, for an order that the
25 Court take judicial notice of each of the events set

1 out in Schedule A hereto. The object of the application
2 was to list, if possible, a set of facts and of dates of
3 which the Tribunal could take notice as being facts of
4 common knowledge under Article 13d of the Charter.

5 It is not proposed that the details should be
6 necessarily agreed to, or that any controversial matters
7 which may be raised in respect of any of the incidents
8 should be deemed to be concluded either. What is re-
9 spectfully requested by the prosecution, to take an
10 example, is the fact that the Mukden Incident happened
11 on the 18th of September, 1931, without in any way de-
12 ciding the details of that incident.

13 There are five incidents which are listed,
14 which may have been more artistically phrased. For
15 example, number thirty-one may possibly raise some con-
16 troversy. The League Assembly unanimously declared
17 Japan an aggressor in Manchuria and recommended non-
18 recognition of Manchukuo; and that incident may be amended
19 so as to read in a way in which it will not raise in it-
20 self controversial matters by substituting that the
21 League Assembly pass the resolution in relation to
22 Manchuria.

23 THE PRESIDENT: Are there many matters like
24 that, Mr. Mansfield?

25 MR. JUSTICE MANSFIELD: Only five of them.

1 The other one is number forty-seven, which con-
2 tains the word "secret" which could be erased.

3 The next one is number fifty-nine which is
4 controversial and, instead of reading as it does in the
5 list, may have merely a declaration of the League with
6 regard to Japan's position in relation to the Nine-Power
7 Treaty.

8 Number eighty-five is the final one which con-
9 tains the word "surprise." The Japanese made a surprise
10 landing at Pakhoi and Kwantung. If the word "surprise"
11 were erased, that probably would prevent any controversy
12 in relation to the matter.

13 THE PRESIDENT: In all the other matters, you
14 simply state the facts without putting your interpreta-
15 tion on them.

16 MR. JUSTICE MANSFIELD: That is what is sub-
17 mitted, yes. The incident is now citing interpretation.

18 It is again suggested that the recognition of
19 these incidents by the Court are matters of common
20 knowledge and would not prejudice the accused in ob-
21 jecting to their materiality or their relevance when
22 they are referred to during the course of the trial.
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1 MR. JUSTICE MANSFIELD: It is again suggested
2 that the recognition by the Court of these incidents as
3 matters of common knowledge would not prejudice the ac-
4 cused in objecting to their materiality or their rele-
5 vance when they are referred to during the course of the
6 trial.

7 THE PRESIDENT: Is another attempted agreement
8 worthwhile?

9 MR. JUSTICE MANSFIELD: Well, the matter has
10 been discussed. I understand that, with regard to these
11 particular incidents, no agreement can be arrived at;
12 but, with regard to the documents, the position may be
13 different after the Court has heard the defense.

14 And the reference is made, in support of the
15 application, also to Article 13a of the Charter as well
16 as to Article 13d which has already been referred to.
17 And it is submitted that all these are matters of common
18 knowledge within the meaning of Article 13d of which the
19 Tribunal shall not require proof.

20 With respect to number four for an order
21 that the Court take judicial notice of each of the
22 documents set out in Schedule B hereto as basic docu-
23 ments without further proof or authentication or
24 proof of the same -- that motion also may be
25 inartistically worded and what is really the basis

1 of the application is that the Prosecution be allowed
2 to introduce in evidence the documents set out in the
3 Schedule without any formal proof of their authenticity
4 and without prejudice to the right of the defense to
5 object to any of them, when they are referred to in
6 evidence, on the grounds of immateriality or irrelevance,
7 or on any other substantial ground.

8 It is submitted that if the Tribunal grants
9 the application, and if the description of each document
10 as contained in the list is treated as merely description,
11 because a document speaks for itself, then there could
12 be no disadvantage to the defense, and I refer particularly
13 to numbers thirty-four and thirty-seven, where the de-
14 scription set out in the list does raise something which
15 might properly be said to be controversial -- for example,
16 thirty-four, the Resolution of the League of the 24th of
17 February, 1933, declaring Japan the aggressor in Manchuria.
18 The document will speak for itself. These are merely
19 words of description, however inartistically they might
20 have been framed.

21 It will be found that each of the documents
22 can fall within the classification set out in Article
23 13c (1), namely, "A document, regardless of its security
24 classification and without proof of its issuance or
25 signature, which appears to the Tribunal to have been

1 signed or issued by any officer, department, agency or
2 member of the armed forces of any government," and also
3 under 13d, which says, "The Tribunal shall neither
4 require proof of facts of common knowledge, nor of the
5 authenticity of official government documents and
6 reports of any nation, nor of the proceedings, records,
7 and findings of military or other agencies of any of
8 the United Nations."

9 And it is for the purpose of listing those
10 documents, or some of the documents which may come
11 within that classification, that this Schedule B
12 has been brought before the Court.

13 I refer also to Article 13a, which says that,
14 "The Tribunal shall not be bound by technical rules of
15 evidence. It shall adopt and apply to the greatest
16 possible extent expeditious and non-technical procedure,
17 and shall admit any evidence which it deems to have
18 probative value." I submit that this request comes
19 well within the limits of that Article. Therefore,
20 instead of the motion as it appears in the paper, I
21 ask for an order that the documents in Schedule B --
22 at least that the Prosecution be at liberty to produce
23 the documents listed in Schedule B without formal
24 proof thereof.

25 With regard to number five, an application

1 that all exhibits tendered in evidence, whether by the
2 prosecution or defense, be numbered consecutively ac-
3 cording to the order of their production in evidence,
4 that is purely a formal matter for the Court. It has
5 been put in the paper in order that the method to be
6 used may be determined before the introduction of evi-
7 dence commences.

8 It is the practice in some countries, I under-
9 stand, for two lists to be kept: one list of the docu-
10 ments tendered by the prosecution, and one list of the
11 documents tendered by the defense.

12 In this case it is submitted that it will
13 simplify the practice and the clerical details required
14 with regard to exhibits if there is only one list kept
15 and if each document is given a number according to the
16 chronological order in which it is presented to the
17 Court.

18 THE PRESIDENT: It is suggested then that
19 your motion should read: "The Court shall not require
20 proof of the authenticity of documents set out in
21 Schedule B hereto and shall receive them in evidence."

22 MR. JUSTICE MANSFIELD: I respectfully accept
23 the suggestion of the Court and ask that the motion be
24 treated as reading in the manner suggested.

25 THE PRESIDENT: We give you leave to amend

1 accordingly.

2 MR. JUSTICE MANSFIELD: These matters are put
3 forward by the prosecution in an endeavor to assist in
4 the presentation of this case in an expeditious and
5 orderly fashion. And it is respectfully submitted that,
6 if the orders asked for are made, the making of the or-
7 ders will have the effect which the prosecution respect-
8 fully submits it will have.

9 MAJOR BLAKENEY: May it please the Tribunal,
10 I speak to this motion on behalf of such defendants as
11 do not individually note their dissent. In regard to
12 the first ground of the motion, paragraph one, as I
13 have previously mentioned, the defense has no objection
14 and wishes to urge in connection therewith our own
15 motion, number eighty, providing for the means of mak-
16 ing our respective opening statements.

17 In respect to paragraph two of the motion that
18 the prosecution be at liberty to produce the documents
19 from Japanese Government surces without proof of
20 authentication, we have no objection to this as a mat-
21 ter of nature or formality of proof. In other words,
22 we are very desirous of dispensing with all technical
23 objections to the degree of formality with which proof
24 is made.

25 Nevertheless, I assume that it goes without

1 saying that under such an order, if the Tribunal should
2 be moved to grant it, the question of the authenticity --
3 that is to say, of the correctness of a particular docu-
4 ment -- would always be reserved, which is the say that,
5 if ninety-five documents should this morning be deposited
6 in evidence, the defense would have no objection to their
7 being offered in evidence without proof of their origin
8 or provenance. But, the defense should like to have
9 the right reserved to it, after the scrutiny of the documents,
10 to object to any particulars in which they seem to be in-
11 correct.

12 THE PRESIDENT: That is not contested. You
13 can always give rebuttal evidence

14 MAJOR BLAKENEY: I further understand from
15 the statement of Mr. Justice Mansfield that, when docu-
16 ments are so introduced, all questions of their rele-
17 vancy and materiality are reserved to be raised at the
18 appropriate time when they are offered as part of the case.
19 If this is the correct understanding, we then have no
20 objection to procedure in the way here outlined.

21 Passing for the moment grounds three and four
22 of the motion, in regard to ground five of the motion,
23 the defense has no objection whatever. But we would
24 like to add this suggestion as a matter of procedure: that
25 all exhibits, once introduced and consecutively numbered,

1 be cross-indexed for a more ready reference of all parties
2 concerned. And I suppose it goes without saying that
3 what the prosecution may do in the production of docu-
4 ments, the defense may likewise do.

5 We come now to ground three, in our view,
6 is the substance of this motion. Mr. Justice Mansfield
7 has correctly said that there has been and apparently
8 can be no agreement on this chiefly because we are
9 utterly at a loss to know what is desired by this ground
10 of the motion. I understand from the arguments on
11 behalf of the motion that the Tribunal is requested
12 only to take notice of dates. The prosecution, there-
13 fore, one supposes, accepts the necessity of proving
14 all of the other facts in connection with these various
15 events listed in Schedule A.

1 THE PRESIDENT: They are asking for judicial
2 notice of each of the events, including the dates.

3 MAJOR BLAKENEY: Certainly, the motion does in
4 terms request just that, but I had understood from the
5 argument of the prosecution that they were abandoning
6 that rather extreme request. If that is then the request,
7 that the Court take judicial notice not only of the date
8 but of the incident, it becomes very difficult to see
9 where the scope of judicial notice is to extend.

10 All the world knows, certainly, that on 18
11 September 1931 there occurred in Manchuria something
12 which is sometimes known, although it is not so known in
13 Japanese, as the "Mukden Incident." But then is the Court
14 to be thus judicially cognizant of the fact, as I have
15 stated it, that on that date something occurred, or
16 must it do more? Must it accept, let us say, the
17 Japanese version of what occurred on that date or the
18 Chinese version? In short, these so-called events are
19 highly contested matters of fact in almost every instance.
20 They are matters of fact which in the end it will be
21 perhaps the most important function of this Tribunal to
22 decide.

23 The request that the Court take judicial
24 notice is, I think, an example of an improvident use of
25 language. If these events are to be noticed judicially,

1 then by definition no proof bearing upon them will ever
2 be made in the cause. I note evidences of dissent on
3 the bench--

4 THE PRESIDENT: How much longer will you be?

5 MAJOR BLAKENEY: I am afraid I will be sever-
6 al minutes, Mr. President.

7 THE PRESIDENT: The Court desires you to
8 proceed.

9 MAJOR BLAKENEY: I was saying that I note
10 evidences on the Bench of dissent from my last state-
11 ment. So, perhaps, I had better explain what I have in
12 mind.

13 According to practice in the jurisdictions
14 with which in all events I am familiar, matters which
15 are taken under judicial notice by a tribunal need not
16 be proved formally in evidence, however much the court
17 may actually require instructions concerning them.

18 In the case of the "Mukden Incident," for
19 example -- I keep referring to the "Mukden Incident"
20 because Mr. Justice Mansfield used it illustratively.
21 In the case of the "Mukden Incident," for example, we
22 are charged in the Indictment with the "Mukden Inci-
23 dent" as one of the crimes there alleged. One assumes
24 that the details of the "Mukden Incident" which make
25 it a crime must therefore be brought before the Tribunal.

1 If this be true, of what then is the Court taking
2 judicial notice?

3 In point of fact the "Mukden Incident" is an
4 unfortunate example to use because we have in existence
5 a document from an official source which summarizes
6 that incident; but the same objection can be raised
7 again -- I am sorry, not five but somewhere around one
8 hundred of these incidents. That is to say, objections
9 can be raised by American counsel; possibly, if Japan-
10 ese translations of these schedules were available,
11 the other thirty-two would be objected to by Japanese
12 counsel.

13 If the prosecution has the intention of
14 proving any fact in connection with, let us say, the
15 "Mukden Incident," it is difficult to see how the
16 prosecution can avoid the necessity then of proving
17 the date and all the attendant circumstances as well.
18 We, therefore, object on behalf of all defendants to
19 this attempt to drop the burden of proving its case
20 under the guise of taking judicial notice of that
21 which all the world knows.

22 I now come to Ground IV of the motion in
23 connection with documents, and I fear that, as the re-
24 sult of amendment of this ground, first by counsel and
25 then by the Court, I don't quite apprehend what the

1 motion is at present. I shall, therefore, content my-
2 self with stating the views of the defense in connection
3 with this matter without regard to the exact wording of
4 the motion because I think we do understand what the
5 prosecution desires to be done.

6 Here again we run into the term "judicial
7 notice," and here again I think demonstrably it is the
8 wrong term. Let us take an example.

9 Take number thirty-four, a resolution of the
10 League of Nations, which happens to have been mentioned
11 by Mr. Justice Mansfield. In what language will the
12 Court take judicial notice? The original document was
13 in French. In what language or in whose translation
14 will the Court take judicial notice of the treaty be-
15 tween Japan and Thailand, item forty-seven?

16 It is not a question of judicial notice. It
17 is a question of what degree of formality shall be used
18 in the proof of these documents; and speaking for the
19 most of the defendants -- it may be that one or two
20 counsel will wish to make their own reservation -- I
21 can say that we have no desire to force upon the prose-
22 cution any degree of formality of proof. But there is
23 all the difference in the world between introducing
24 each of these documents at an appropriate time, con-
25 necting it up with some issue relevant to the case and

1 giving those concerned their opportunities to make
2 their objections or reservations -- between that and the
3 Court's now taking judicial notice in toto of this mass
4 of documents.

5 Now, if, as I understand, the term "judicial
6 notice" has been removed from this ground of the motion,
7 and the Court proposes merely to waive proof of authen-
8 ticity and to receive the documents in evidence, I wish
9 again to make on behalf of the defense the same request
10 as we have heretofore made in an allied matter, that
11 all questions of relevancy and materiality be reserved
12 until such time as a specific document is offered in
13 evidence on a specific issue. But we do think, in the
14 interest of orderly defense, if not more, that it is
15 quite essential that the Tribunal and all counsel know
16 at a given moment whether a particular document is
17 being considered in evidence against a particular de-
18 fendant; and to that, I am confident, the prosecution
19 has no objection but rather will be in agreement.

20 We therefore have, to sum up, no objection
21 to the introduction of any document whatsoever at any
22 time subject to the proviso that our objections to
23 relevancy and materiality may be raised when the attempt
24 at connection is made; that errors of fact or of trans-
25 lation, discovered by the exercise of reasonable

1 diligence after their introduction, may be brought to
2 the notice of the Tribunal for correction as, for
3 example, if a treaty introduced in evidence should
4 later be proved to have been not the final but an
5 earlier draft; and, finally, we hope that the Tribunal
6 will extend to the defense the same privilege of intro-
7 ducing documents in the same terms and the same manner
8 as to the prosecution.

9 I have said that I am not able to speak for
10 all defense counsel, and it may be that there are some
11 who differ from my views.

12 DR. KIYOSE: Allow me to say a few words.

13 The motion which has been presented by the
14 prosecution -- or rather, correction, the translation of
15 the motion which has been presented by the prosecution,
16 is not in the hands of the Japanese defense counsel.
17 A simple colloquy in the courtroom would be sufficient
18 if it were interpreted by the court interpreters. But
19 this, the Schedule A annexed to the motion, contains
20 one hundred thirty-two items. Schedule B mentions all
21 sorts of documents and their number alone is ninety-
22 five. I, therefore, would ask the Tribunal to postpone
23 its decision on this motion until the Japanese counsel
24 know what is contained in Schedules A and B and can con-
25 sider them.

1 I find even now a certain number of mistakes
2 in these schedules. For example, the establishment of
3 Manchukuo was not on the 9th of March, 1932. Schedule
4 A, number twenty-two, adopts this date. It is very hard
5 to understand, and to take judicial notice of such a
6 thing would be very grave.

7 THE MONITOR: Correction: item twenty-three
8 instead of twenty-two.

9 DR. KIYOSE: Item forty-seven mentions a
10 secret treaty between Germany and Japan. How can
11 judicial notice be taken of a secret treaty? Even we
12 Japanese do not know the secret agreement, and I believe
13 that your Honor and the Members of the Tribunal prob-
14 ably do not know it either.

15 THE MONITOR: Even we Japanese do not yet
16 know.

17 DR. KIYOSE: In item seventy-seven it is
18 written that the China Affairs Board was established on
19 16 December 1938. No such thing was established at that
20 time. At that time what was established was the Kōain
21 or, in English, the Greater East Asia Board.

22 Number ninety-four states that the Imperial
23 Rulers Association was established on September 17,
24 1940. This is incorrect.

25 In number ninety-seven, a "DRAA" is mentioned.

1 I do not know what it is.

2 In number one hundred sixteen it is written
3 that Japan invaded Thailand. Japan did not invade
4 Thailand. Japan transited through Thailand by agree-
5 ment.

6 THE MONITOR: "We" did not invade Thailand,
7 instead of "Japan."

8 DR. KIYOSE: These are the errors which I have
9 been able to pick up in a very little time at this
10 Tribunal. I should like to be able to have a trans-
11 lation of all of these lists to be enabled to show them
12 to my more than twenty other colleagues.

13 Whether the documents of the League of
14 Nations and the documents concerning Thailand will be
15 taken in judicial notice in the French language or the
16 Thai language has already been mentioned by my colleague.

17 In item fifty-five the Japanese Constitution
18 and other regulations and laws are mentioned. If the
19 legal text is taken into judicial notice, we have no
20 objection, but certain army orders have not even been
21 published. We do not know the exact text of these
22 documents.

23 THE MONITOR: Correction on the previous
24 statement: Instead of "certain army orders," it should
25 read, "certain military orders from high command."

1 DR. KIYOSE: I do not wish to complicate the
2 proceedings. But, from the point of view of the rights
3 of the defendants, I would beg that no decision should
4 be taken until the Japanese counsel will be enabled to
5 read and study these documents.

6 MR. JUSTICE MANSFIELD: If the Tribunal
7 please, I will not take more than four minutes. I have
8 been asked to assert concisely, with regard to the de-
9 scription of the documents, that the description of the
10 documents contained in the schedule is to be taken as
11 purely descriptive -- that is of all documents -- and
12 that the documents themselves will speak for themselves
13 when they are produced in evidence. I accept also the
14 condition that, if any mistake should be found in a
15 document after it has been put in evidence, there should
16 be no reason why it cannot be corrected.

17 With regard to the facts -- list of facts --
18 the prosecution will prove in detail all those events
19 which have been mentioned. It is only for the purpose
20 of having a chronological list of some of the main
21 events and the dates on which they happened before the
22 Court at an early stage of the trial so that reference
23 may be made at an early stage of the trial, when evidence
24 is being given to events which happened some consider-
25 able time later, for the purpose of connecting them

1 together and making a more orderly and more readily
2 understandable method of presentation.

3 The defense has stated that it is at a loss
4 to understand what the application was. I regret that
5 the sound system is defective, but I have already
6 stated that we were putting these forward as a list
7 of matters of common knowledge so as to allow the Court,
8 the prosecution, and the defense to know at the outset
9 what facts the Court would recognize as being matters
10 of common knowledge.

11 The prosecution does not drop the onus of
12 proving the details. The prosecution did not realize
13 at this stage that, if those facts were accepted as
14 having happened, they would constitute the discharge
15 of the onus of proof. We do not suggest that they do
16 constitute any discharge of our onus. We will prove
17 the facts and details in connection with each of the
18 incidents.

19 I would finally make the suggestion that,
20 if all the facts are rejected by the Court as being
21 facts of common knowledge of which no proof is needed,
22 then the particular provision of the Charter saying
23 that proof of facts of common knowledge is not neces-
24 sary is entirely useless.

25 THE PRESIDENT: The Court will consider the

1 matter and give its decision later.

2 The Court stands adjourned until thirty
3 minutes after nine tomorrow morning.

4 (Whereupon, at 1230, an adjourn-
5 ment was taken until Tuesday, 4 June 1946,
6 at 0930.)

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